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4 MARCO HEYWARD,  
5 Plaintiff,

6 v.  
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8 UNITED STATES GOVERNMENT,  
9 Defendant.

10 Case No. 15-cv-04254-KAW

11 **ORDER GRANTING AS UNOPPOSED  
MOTION FOR EXTENSION OF TIME  
TO FILE AMENDED COMPLAINT;  
TERMINATING MOTION TO DISMISS  
AS MOOT**

12 Re: Dkt. Nos. 10, 26

13 On March 14, 2016, pro se plaintiff Marco Heyward filed a "motion for extension of time  
14 to file amended complaint." (Dkt. No. 26.) The Government has not filed an opposition to the  
15 motion, and the time for doing so has passed. *See Civil L.R. 7-3.* Accordingly, the motion,  
16 construed as a motion for leave to file an amended complaint, is granted as unopposed. *See Judge*  
17 *Westmore's General Standing Order ¶ 22 ("The failure of the opposing party to file a*  
18 *memorandum of points and authorities in opposition to any motion shall constitute consent to the*  
19 *granting of the motion."). The First Amended Complaint docketed as document number 28 is now*  
20 *the operative complaint and is deemed filed as of the date of this order. The pending motion to*  
21 *dismiss is TERMINATED AS MOOT. Should the Government move to dismiss the First*  
22 *Amended Complaint, it shall be sure to address why equitable tolling would not apply in this case*  
23 *given that the action Plaintiff previously filed, *Heyward v. United States Government*, No. 14-cv-*  
24 *5114-KAW, appears to have been filed within the applicable statute of limitations. See U.S. v.*  
25 *Kwai Fun Wong*, 135 S. Ct. 1624, 1639 (2015) ("[W]e hold that the FTCA's time bars are  
26 *nonjurisdictional and subject to equitable tolling."). If the Government does not file a motion to*  
27 *dismiss the First Amended Complaint, the Court will hold a case management conference in this*

1 case on April 26, 2016 at 1:30 p.m.

2 IT IS SO ORDERED.

3 Dated: 04/04/2016



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5 KANDIS A. WESTMORE  
United States Magistrate Judge

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11 United States District Court  
12 Northern District of California  
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